

TORRENS' ACT.

To the Editor of the *Herald*.

Sir.—The last subject which I have to consider in relation to this Act is that of trusts. It is, I believe, the principal, if not the sole object of the Act to afford the means of determining easily, in every particular case, in whom the legal estate to lands is vested. The subject of trust is ignored as far as possible, being only alluded to so far as it seemed absolutely necessary to save the rights of beneficiaries. No attempt is made to mitigate the difficulties which are continually occupying our Courts of Equity on this subject; the simplest question in such cases being generally that of the legal estate.

The few provisions in relation to trusts which are to be found in the Act are very cursory, and, if not absolutely contradictory, are at any rate very difficult to reconcile with the general policy and intention of the Act.

A trustee, being a registered proprietor in fee simple, has in every case, and under certain restrictions to be presently considered, an absolute power of sale; and a purchaser from him, even with express notice of the trust, is quite safe.

A trustee having a title under the old system, without express power of sale, with the consent of the person beneficially entitled to the first life estate, may register his title, and thus acquire such a power. It is easy, therefore, for the trustee, with the concurrence of the person so entitled, to defeat the settlement. The purchaser would be quite safe; the fund is not liable for any breach of trust; and an action for damages by the persons aggrieved is expressly barred after six years.

Sections 81, 82 are intended to prevent such wrongs, and are very ingeniously devised and cleverly drawn. Under these sections the settlor, or any person claiming beneficially, may lodge a caveat which shall operate as a personal injunction to restrain the Registrar from registering any instrument affecting the property, and can only be dissolved by an order of the Court or of a Judge, granted upon the application of the registered proprietor. But, in the case above supposed, a person beneficially entitled in remainder under the settlement might not have been in existence when the registration was effected; and the land might have been sold and the proceeds dissipated before he was born.

It should be observed that, when any trust is registered under the Act, the only safe course for the beneficiaries, and for the persons whose consent to a sale is required under the trust deed or will, is at once to lodge a caveat under section 81, for otherwise secret dealings, which cannot be set aside, may be made with the land, without the persons interested receiving any notice. Neither are trust estates in unregistered lands quite safe.

The only person who can prevent the trustee from registering under section 13, clause 1, is the person beneficially entitled to the first life estate. This is, apparently, contradicted by section 16. Persons beneficially entitled can protect themselves by taking care to lodge caveats under section 81 immediately upon the registration being effected. That section refers expressly to lands already under the operation of the Act, and the rather contradictory language of section 82, in which it seems to be assumed that the preceding section refers to unregistered lands as well, can hardly be considered to extend the right of entering this kind of caveat to persons having equitable interests in lands which have not been registered. If the right were so extended, then such a caveat would amount to a kind of registration, or perpetual claim, to an equitable interest; and it would be advisable for all persons having such interests to lodge caveats at once, to prevent registration of the property without their knowledge.

When the person supposing himself to be beneficially interested has lodged a caveat, and thus prevented any dealing with the land, he can take any further steps under these sections. The registered proprietor, supposed to be a trustee, may, however, bring the caveat before the Supreme Court, and require him to show cause why the caveat should not be removed; and the Court is empowered "to make such an order in the premises as may seem fit"; that is, I suppose, to make a decision in accordance with the established doctrines of the Courts of Equity in relation to trusts. The words of the section seem sufficiently comprehensive to include all trusts, whether express, implied, or constructive. A registered proprietor, therefore, may be disturbed in the enjoyment of his property by a caveat from any person claiming beneficially under any unregistered instrument, or by deviation of law or otherwise; and he cannot get out of the difficulty except by bringing the claimant before the Court, and submitting to any order which may be made in the premises. In making the inquiry, the Court would have to examine unregistered instruments, and, in fact, to investigate the whole history of the title, in the same manner as would be done in an equity suit, if the Real Property Act had never been passed: except that there might be some additional difficulty on account of very obscure provisions. If this view of the operation of these sections is correct, then they provide a new way of commencing an equity suit, and go very far towards reducing the whole enactment to a dead letter. Under the old system the possession of the legal estate is by no means a perfect security, for it is a common practice of the Courts, in furtherance of the ends of justice, to declare the person so possessed to be a trustee for the rightful owner, and compel him to convey; and under sections 81, 82 it seems, a similar course may be pursued.

Curiously enough, however, these proceedings cannot be initiated by the persons claiming beneficially—all they can do is to lay a kind of embargo on the land, and prevent any transfer of it either by descent or otherwise. If the registered proprietor merely remains in possession of the rents and profits, these sections afford no remedy against him; and if he bona fide believes himself to be entitled to hold the lands for his own benefit, the adverse claimants seem left without any remedy. Section 115 bars every action for the recovery of the land; and in section 40 it is laid down, in terms almost as express as can be conceived, that a registered proprietor shall, except in case of fraud, hold the lands discharged from all trusts "absolutely free from" all unregistered interests: which must include trusts which cannot be registered. It is difficult to see how, in the face of these sections, a suit could be maintained for the recovery of the rents and profits, or for securing in any way the beneficial enjoyment of the property.

I say that there seems to be no remedy left in such cases; but section 189, as far as it is possible to understand what effect it will have, appears to place everything relating to this part of the subject in a different light. By that section, when a registered proprietor shall appear to the Court to be a trustee "within the intent and meaning of any Trustee Act then in force," they may make an order which shall

AUSTRALIAN GAS-LIGHT COMPANY.

This half-yearly general meeting of the shareholders of the Australian Gas-light Company was held yesterday, at the offices of the company, at two o'clock. Hon. Dr. Mitchell, M.L.C., in the chair.

The Secretary read the following report and balance sheet:—

REPORT.
Both June, 1864—15th half-year.
The profits of the past half-year were £7,851 0 10
The balance at credit of profit and loss on December 31, 1863, was 12,899 13 4

Together 211,500 0 2

Debtors £7,144 11 6
Bank debts 362 18 2
Amount transferred to reserve fund 1,800 0 0

And there remains a balance of unappropriated £11,041 10 0

The directors recommend a dividend for the past half-year of £1 per cent., with a bonus at the rate of two and a half per cent., payable at the Bank of New South Wales, Sydney, on and after the 1st day of September next.

The directors have the pleasure of reporting that the greater portion of the capital required for the more extensive and efficient distribution of gas, have arrived and no time will be lost in bringing them into operation. An additional sum from banks and pawnbrokers is expected daily; the iron tank has arrived, and the ground is being prepared for its reception.

J. MITCHELL, chairman
R. MANFIELD, secretary.

Company's Office, Sydney, 15th August, 1864.

Balance Sheet of the Australian Gas-light Company.
June 30, 1864.
Dr. LIABILITIES.

Trade creditors:—
Bank at hand at Haymarket £1,000 0 0
Temporary loans 5,175 9 4

Total 6,175 9 4

Postage paid 98,344 0 0
Reserve fund (a) 15,000 0 0

Reserve for replacement of 3,188 19 4

Dividends unclaimed 2,482 19 3

Advances on new shares 1,885 13 0

The rest of unappropriated profits (b) 16,041 10 6

£12,899 13 7

£142,614 6 7

(a) Reserve fund £11,041 10 0

Add transfer from the rest, per vote of general meeting of 17th February 5,000 0 0

£16,041 10 6

(b) The "rest" £14,041 10 6

Debtors transferred to reserve 5,000 0 0

£11,041 10 6

Creditors:—
Bank investment:—
Postage, carriage and postage and publicans, and service pipe laid £104,936 12 19
Furniture and fixtures 977 14 10

Postage investment:—
Coal and residual products 1,427 17 5
Apparatus in store 1,427 17 5
Pillars 1,427 17 5
Interest to engineers 1,427 17 5

Trade debtors:—
Trade creditors:—
Postage, carriage and postage and publicans, and service pipe laid 11,943 7 3
Furniture 2,582 0 7
Interest 1,000 0 0

£142,434 6 7

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To dividend and bonus payable on 1st March, 1864 27,141 11 6
Bank debts 362 18 2
The rest at 30th June, 1864 (a) 16,041 10 6

£11,041 10 6

(a) Less transfer to reserve, £3,000 £11,041 10 6

By proceeds of gas and other sales and services £17,323 3 1

By profits of the rest at 31st December 51,056 13 4

£16,041 10 6

MILDS 0 2

£17,323 3 1

To dividend and bonus payable on 1st March, 1865 27,141 11 6

Bank debts 362 18 2

The rest at 30th June, 1864 (a) 16,041 10 6

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NOTICE—The Workmen formerly employed by Messrs. RANDLE and GIBBONS on N.S. Contract Great Southern Railway, and for whom a sum of money was voted by the Legislature during the last session of Parliament, will be entitled on their claims at the Rock Water Hole, on TUESDAY and WEDNESDAY DAY, the 23rd and 24th instant, between the hours of 10 a.m. and 2 p.m.; and at the office of the Department of Public Works, Phillip-street, Sydney, on FRIDAY and SATURDAY, the 26th and 27th instant, between the same hours.

ARTHUR T. HOLROYD,
Department of Public Works, 17th August.

Police Department, Inspector-General's Office,
Sydney, 16th August, 1864.

BENZINE—Information, having reached this office that benzine, mineral turpentine, is stored in large quantities in various parts of the city, to the great danger of life and property, and that it is within the power of all persons to keep such commodity as guilty of an indecent offence, and the police have received instructions to take the necessary steps to prosecute all persons so offending. JOHN MCLEHIE, Inspector-General of Polities.

IMPERIAL FIRE INSURANCE COMPANY.—Capital, £1,000,000. Income, £230,000. Reserve fund, £240,000.

Insurances effected on buildings, merchandises, and ships. Losses fully paid. Premiums made good, and all claims on adjustment paid in Sydney.

YANNING, GRIFFITHS, and CO., agents, Spring-street, Sydney.

NORTHERN FIRE AND LIFE INSURANCE COMPANY.—SYDNEY BRANCH, 63, MARGARET-STREET.

Chancery Lane, London, and Liverpool, in Australia.

Claims promptly settled in Sydney, and to the satisfaction of ROBERT HENDERSON, Resident Secretary.

AUSTRALIAN ALLIANCE INSURANCE COMPANY.—Fire Insurance, Life Assurance, Guarantees for Honesty.

New South Wales Branch, Exchange-corner, Sydney.

Fire Insurance at current rates, with special privileges to insureds.

Life Insurance and Guarantee Policies issued separately or combined.

Agents wanted.

JOHN MARTIN, Secretary.

ROYAL FIRE AND LIFE INSURANCE COMPANY OF LIVERPOOL AND LONDON.

Capital, £200,000.

SYDNEY AGENCY.

FIRE DEPARTMENT.

Under the head, the returns issued by the Imperial Parliament fully prove that the insurance Company has been maintained with the British Government in payments of duty, without the aid of amalgamation or purchases, being considerably in excess of any other Provincial Office.

The undersigned are fully empowered to settle all claims in the colony, and insurers may rely on the liberal and prompt payment of losses. The terms previously set forth are adopted by all the insurance companies in this colony, viz.—

INSTANTANEOUS RELIEF AFFORDED IN PLUMBERS.

Mr. W. S. YATES, of South Yarra, Australia, writes, October 5th, 1863:—

"I have much pleasure in bearing my testimony to the efficacy of Dr. Jayne's Expectorant. I was suffering from an attack of acute pleurisy, so that I could not breathe freely, and was unable to walk two or three steps without pain, and was hardly getting worse when I obtained the medicine and quieted the symptoms, and, were it not for the requirements of my profession, I believe I would have, this effected a permanent cure."

SAVED ONE LIFE AT LEAST.

Mr. A. D. LICKY, of River Styx, Ohio, writes:—

"I have a little girl subject to croup, and being afraid to depend on the ordinary remedies have employed a physician to her. Last summer, 1863, Dr. Jayne's Expectorant was taken twice a day, and given in doses of one drachm, in powder, to the child, and she has been well ever since. The Expectorant always relieves the child in a few hours, and in half-an-hour, relief was obtained.

"The undersigned is the only physician that ever gave his immediate and permanent relief. I have tried other lung remedies, but they proved useless, and a resort to your Expectorant was in a short time I was entirely cured."

IMMEDIATE AND PERMANENT RELIEF.

Mrs. J. B. FISHER, of St. Johnsville, Montgomery county, N.Y., writes:—

"My little daughter, aged ten years, has always been subject to cold, producing croup, congestion, inflammation of the lungs, and difficulty in breathing. Dr. Jayne's Expectorant is the only medicine that ever gave her immediate and permanent relief. I have tried other lung remedies, but they proved useless, and a resort to your Expectorant was the only means of cure."

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